

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT

I.A No. 3689 of 2022

In

CP No. 315 of 2019

Under Section 60 (5) of the Insolvency and
Bankruptcy Code, 2016 read with Rule 11 of
the NCLT Rules, 2016.

In the matter of

Dharmesh Jain, residing at Nirmal House,
Nirmal Nagar, Mulund Goregaon Link Road,
Mulund West, Mumbai-400080.

... Applicant

Vs

1. **Mr. Jayesh Sanghrajka**, RP of Nirmal
Lifestyle Realty Private Limited, C/o
Jayesh Sanghrajka & Co LLP, 405-4-6,
Hind Rajasthan Building, D.S Phalke
Road, Dadar East, Mumbai 400014;
2. **Oberoi Constructions Limited**,
Commerz, 3rd Floor, International
Business Park, Oberoi Garden City, Off
W.E. Highway, Goregaon (E) Mumbai-
400063

... Respondents

Coram:

Hon'ble Shri H.V.Subba Rao, Member (J)

Hon'ble Mrs. Madhu Sinha, Member (T)

Order delivered on: 07.03.2024

ORDER

[Per se: Shri H.V.Subba Rao, Member (J)]

1. The above IA is filed by Applicant claiming the following reliefs:
 - a. *Reject the waiver sought by the Respondent No.2 in Clause 7.33 of the Resolution Plan for cancellation of the General Power of Attorney dated 06.08.2005 bearing*

Registration No. BDR/14/4844/2005 ("POA") granted by Ralliwolf Ltd. In favour of the Applicant;

- b. Without Prejudice and in the alternative to prayer Clause (i) hereinabove, this Tribunal be pleased to direct the Respondent No. 2 to remove and/or delete Clause 7.33 from the Resolution Plan;*
- c. Protect and safeguard the rights/powers and authorities granted in favour of the Applicant as provided for under the Power of Attorney dated 06.08.2005;*
- d. Costs of the present Interlocutory Application;*
- e. Any other order as this Tribunal may deem fit in the facts and circumstances of the present case.*

2. Brief facts behind filing the above application are as follows:

- 2.1 Ralliwolf Limited ("Ralliwolf") was the owner of immovable property situated at L.B.S Road, Mulund, Mumbai- 400080 ("Mortgage Property"). The Corporate Debtor and Ralliwolf entered into an MOU wherein, Ralliwolf agreed to sell the Mortgaged Property along with all the structures thereon to the Corporate Debtor and pending such sale, agreed to grant development rights to the Corporate Debtor by way of Development Agreement dated 04.08.2005. Subsequently, a Power of Attorney ("POA") was executed by Ralliwolf in favour of the Applicant and his wife Mrs. Anju Jain (since deceased) on 06.08.2005 where under Ralliwolf appointed them as constituted attorneys in relation to the development of the Mortgaged Property and granted certain development rights to them.
- 2.2 *Vide* an order dated 06.12.2021 this Tribunal admitted Company Petition No. 315 of 2020 and initiated the Corporate Insolvency Process ("CIRP") of the Corporate Debtor. Subsequently, the Respondent No. 1 was appointed as the Resolution Professional by order of this Tribunal dated 07.03.2022.

- 2.3 In the ongoing CIRP of the Corporate Debtor, a Resolution Plan was submitted by Respondent No. 2 on 15.07.2022. After negotiations and deliberations between the CoC and Respondent No. 2, a revised Resolution Plan was submitted by Respondent No. 2 on 30.08.2022.
- 2.4 In the seventh meeting held on 01.09.2022, the CoC deliberated and discussed the Resolution Plan and subsequently voted in favour of and approved the Resolution Plan. The Respondent No. 1 has filed Interlocutory Application bearing No. 2455 of 2022 under Section 31 of the Code for approval of the Resolution Plan and the same is pending before this Tribunal.
- 2.5 On perusal of the Resolution Plan it is observed that vide clause 7.33 thereof, the Respondent No. 2 has sought cancellation of the registered POA executed in favour of the Applicant. The said clause has been reproduced herein below for the sake of convenience:

“7.33: The General Power of Attorney dated 6th August 2005 registered with the office of the Sub-Registrar of Assurances under Serial No. 4844 of 2005 was executed by Ralliwolf in favour of (i) Mr. Dharmesh Jain, and (ii) Mrs. Anju Jain (since deceased), shall stand cancelled without any further act or deed and without the necessity of executing any separate deeds, documents and writing for effectuating the same, by order of the NCLT sanctioning this Resolution Plan.”

- 2.6 The Applicant also submits that the registered POA confers valuable rights in his favour in respect of and concerning the Mortgaged Property and has been executed by the erstwhile owners, i.e. Ralliwolf in his favour. The said POA has been executed independently of the Development Agreement and the Applicant is entitled to exercise all rights, powers and authorities conferred on him under the POA in his personal and individual capacity, without in any manner being affected by the ongoing CIRP. The Applicant further submits that if the POA granted in favour of the

Applicant is cancelled as provided for under the Resolution Plan, then the rights, powers and authorities of the Applicant as the Power of Attorney Holder will be severely prejudiced, the POA would stand extinguished and would consequently be rendered unenforceable.

- 2.7 The Applicant states that the right, title and interest created in favour of the Applicant under the registered POA ought to be protected and safeguarded and ought not to be prejudiced owing to the waivers sought by Respondent No. 2 in the Resolution Plan.
 - 2.8 In the event the registered POA is cancelled, the rights, powers and authorities of the Applicant as the Power of Attorney Holder would be severely prejudiced.
 - 2.9 In view of the above, it is important that the rights, title and interest of the Applicant created under the registered POA not be prejudiced owing to the waivers sought by Respondent No.2 in the Resolution Plan.
3. The Respondent No. 1/ RP filed affidavit in reply to the contentions made in the above application. The important paragraphs of the reply are extracted hereunder:
- 3.1 The Resolution Plan has already been approved by the COC and Respondent No. 1/ RP has even filed an application for approval of Resolution Plan which is pending before this Tribunal. Under such circumstances, it is ex facie apparent that the present application preferred by the Applicant is nothing more than a delaying tactic, by which the present CIRP is sought to be side-tracked and/or delayed.
 - 3.2 The Applicant has referred to and relied upon a Power of Attorney granted in relation to the development of the mortgaged property. It is admitted position that the property was never developed and there was various dues which remained pending and outstanding. The Corporate Debtor and the applicant both failed to develop and/or fulfil its obligation under the POA.

- 3.3 For an effective Resolution Plan and operation of the business for the CD even after the Resolution Plan is implemented, conveyance of land is required. As the Applicant has failed to abide by the POA in this regard, the said POA shall stand cancelled. NO harm would be caused to the rights, powers and authorities of the Applicant if the said POA is cancelled.
4. Respondent No. 2, the Resolution Applicant also filed its reply to the contentions made in the above application. The important paragraphs of the reply are extracted hereunder:
- 4.1 Ralliwolf Limited a company under the provisions of the Companies Act, 2013 is the owner of all those pieces and parcels of land admeasuring approximately 20,262.40 square metres bearing CTS Nos. 547 and 547/1, 547/2, 547/3, 547/4, 547/5 and 547/6, lying, being and situate at LBS Marg, Mulund West, Village Nahur, Sub-District of Kurla, Mumbai along with structures on the land.
- 4.2 On 01.10.2004, an MOU was executed between Ralliwolf and the CD wherein it was inter alia agreed that Ralliwolf shall sell and transfer the Property to the CD on an "as is where is" basis and for a consideration of Rs. 7,00,00,000 on the terms and conditions stated in the said MOU.
- 4.3 Pending the sale and upon payment of the aforesaid consideration, the CD shall be permitted to develop the Land. It was agreed under Clause 13 of the MOU that Ralliwolf shall execute and register an irrevocable Power of Attorney enabling the CD to carry out the development work on the terms stated therein.
- 4.4 Pursuant to the MOU the CD made payment of the consideration of Rs. 7,00,00,000. Accordingly, on 04.08.2005, a Development Agreement was executed between Ralliwolf and the Corporate Debtor and registered with the office of the Sub-Registrar of Assurances under Serial No. BDR-14/4843 of 2005 ("Development Agreement"), wherein the Corporate Debtor acquired development rights to develop the Property from

Ralliwolf and Ralliwolf granted to the Corporate Debtor the license and authority to enter upon the Property for commencing and carrying out the development of the Land, on the terms and conditions stated therein. Copy of the Development Agreement dated 4 August 2005 executed by Ralliwolf in favour of the Corporate Debtor has been annexed.

- 4.5 Under the Development Agreement, it was agreed that Ralliwolf shall execute a conveyance of the Property in favour of the Corporate Debtor as and when called upon by the Corporate Debtor. The Development Agreement states that it is supplemental to the said MOU, and that all terms of the said MOU are in full force and effect except as amended by the Development Agreement. Further, under Clause 6(ii) of the Development Agreement it was agreed that the Owner shall execute a Power of Attorney in favour of the nominees of the Corporate Debtor, with a view to enable the Corporate Debtor to expeditiously make and submit applications, plans, obtain building permissions and matters incidental thereto.
- 4.6 The MOU and Development Agreement contemplated execution of a Power of Attorney to enable the Corporate Debtor to undertake the aforementioned actions for development of the Property pending its conveyance. The Development Agreement did not contemplate granting any Power of Attorney in favour of the Applicant and/or his wife in their individual or personal capacity and/or independent to the Development Agreement, as has been wrongly alleged by the Applicant in the captioned Application. The Power of Attorney was therefore, to be executed in favour of the Corporate Debtor, of which the Applicant was merely a nominee.
- 4.7 Accordingly, on 06.08.2005, shortly after the execution of the Development Agreement, the purported General Power of Attorney was executed by Ralliwolf in favour of the Applicant and his wife, Anju Jain

(since deceased) and registered with the office of the Sub-Registrar of Assurances under Serial No. Serial No. BDR-14/4844 of 2005 ("POA"). Recital (iv) of the POA explicitly states that the POA has been executed in favour of the Applicant and his wife to enable the Corporate Debtor to develop the Property. Therefore, the Applicant's contention that the POA has been executed in favour of the Applicant and his wife in their personal and individual capacity and independently of the Development Agreement, is not only false and misconceived, but is entirely contrary to the terms of the POA itself and the documents on record. The POA is not an independent document or transaction.

- 4.8 Under the MOU and Development Agreement, Ralliwolf had transferred the development rights of the Property in favour of the Corporate Debtor and also entitled the Corporate Debtor to obtain conveyance of the Property in its favour. Under the POA, no rights in the Property have been transferred to or granted in favour of the Applicant. The POA was executed pursuant to the Development Agreement and the MOU. Development rights were transferred under the Development Agreement in favour of the Corporate Debtor. No rights were granted in respect of the development of the Property in favour of the Applicant and/or his wife in their individual or personal capacity, as alleged by the Applicant or at all. Such contentions are contrary to the terms of the POA, the MOU and the Development Agreement as highlighted in the foregoing paragraphs.
- 4.9 In or around the year 2017, the Corporate Debtor availed certain deposits/loans from the Financial Creditor, AASAN Corporate Solutions Private Limited ("Aasan"). The said Land and the rights of Ralliwolf and the Corporate Debtor in the said Land were mortgaged in favour of IDBI Trusteeship Services Limited ("IDBI") in its capacity as the trustee on behalf of and for the benefit of Aasan.

- 4.10 On 06.12.2021, an Order was passed under Section 14 of the Code by this Tribunal admitting the present Company Petition filed by Aasan under Section 7 of the Code.
- 4.11 Under the present Resolution Plan, the liabilities of the Corporate Debtor will be settled in the manner specified in the Resolution Plan, and the Corporate Debtor will be acquired by the Resolution Applicant and will thereafter merge with the Resolution Applicant pursuant to a Scheme of Amalgamation forming part of the Resolution Plan, subject to the terms and conditions specified in the Resolution Plan. Therefore, pursuant to the merger, the Resolution Applicant shall obtain the rights, title and interest created in favour of the Corporate Debtor under the MOU and Development Agreement, upon approval of the Resolution Plan.
- 4.12 After the approval of the Resolution Plan, the Applicant will cease to be the promoter or shareholder (direct or indirect) of the Corporate Debtor and will not be concerned with the Corporate Debtor. Accordingly, the Resolution Applicant does not want the POA to continue. In any case the Applicant was a mere nominee of the Corporate Debtor. The Resolution Applicant apprehends that the Applicant will misuse the POA to derail the business of the Corporate Debtor. This application is an indication of the bad faith and malafide intent of the Applicant. This Tribunal has the jurisdictional power to grant the relief prayed for in the Resolution Plan, as the relief is in the interest of the CIRP process.
- 4.13 The Resolution Applicant denies that there is any right, title and/or interest whatsoever created by the POA or otherwise in favour of the Applicant as sought by the Applicant or otherwise.
- 4.14 Further, upon the transfer of rights to the Property by Ralliwolf to the Corporate Debtor and granting a right in favour of the Corporate Debtor to obtain a conveyance of the Property in its favour vide the MOU and Development Agreement, there was no question of Ralliwolf

having/retaining any development rights in the Property and/or transferring any right or interest in the Property in favour of any other person in their personal or individual capacity or otherwise whether vide the POA or otherwise.

- 4.15 Upon approval of the Resolution Plan and the Scheme of Amalgamation forming a part of the Resolution Plan, the Corporate Debtor shall stand merged with the Resolution Applicant and as a result the development rights to the Property and the right to obtain conveyance of the Property arising out of the MOU and the Development Agreement shall vest in the Resolution Applicant and therefore, there is no reason and/or purpose for the purported POA in favour of the Applicant to remain in effect and the same cannot be acted upon by the Applicant and hence, ought to be cancelled.
- 4.16 The allegations contained in the captioned Application are completely baseless and frivolous, and the same has been filed to obstruct and interfere with the CIRP process of the Corporate Debtor.
- 4.17 If the relief and waiver contained in Clause 7.33 of the Resolution Plan for cancellation of the POA is not granted by this Tribunal, grave harm and prejudice will be caused to the Resolution Applicant, as it would have the effect of wrongly permitting the Applicant to undertake acts towards development of the Property despite all development rights in respect of the Property having been transferred in favour of the Corporate Debtor pursuant to the MOU and the Development Agreement and despite the right to obtain conveyance of the Property being granted in favour of the Corporate Debtor. The same would be completely untenable in law, and contrary to the provisions of the MOU, Development Agreement, and the POA. This would severely impact the Resolution Applicant's proposal for resolution of the Corporate Debtor under the Resolution Plan and would defeat the entire CIRP process.

4.18 The present Application is seeking reliefs which are unsustainable and unprecedented. In light of the above facts and circumstances, the present Application ought to be dismissed, in limine and with costs.

5. Observations and Findings:

- 5.1** Heard Mr. Gautam Ankad, Ld. Senior Counsel appearing for the applicant and Mr. Ravi Kadam Ld. Senior Counsel appearing for the Resolution Professional / First Respondent and Mr. Zal Andhyarujina Ld. Senior Counsel appearing for the Successful Resolution Applicant and perused the record. The Ld. Senior Counsel appearing on both sides made their submissions in the line of their pleadings.
- 5.2** It is the submission of Mr. Gautam Ankad appearing for the applicant that a registered General Power of Attorney dated 6th August 2005 had been executed in the name of the applicant Mr. Dharmesh Jain and his wife Mrs. Anju Jain constituting and appointing both of them as the Power of Attorney holders of their principal “**RALLIWOLF LIMITED**” and the said Power of Attorney is in force. It is his further submission that the above Power of Attorney was executed in the personal capacity of the applicant empowering the applicant to do and perform various acts on behalf of “**RALLIWOLF LIMITED**” which was sought to be cancelled by the second respondent without the necessity of executing any separate deeds, documents for effective implementation of the Resolution Plan and by way of waiver under Clause 7.33 and if such waiver is granted by this Tribunal it would cause serious prejudice to the applicant and would jeopardize his rights under the said Power of Attorney. It is his further submission that putting such a clause by way of a waiver in a Resolution Plan would amount to a “condition” which cannot be approved by this Bench. It is also his further submission that the Adjudicating Authority is a mere Tribunal and is not vested with the powers of a Civil Court and

therefore this Tribunal has no power to cancel a registered Power of Attorney which falls within the exclusive domain of a Civil Court.

5.3 Mr. Ravi Kadam, appearing for the Resolution Professional vehemently opposed the above contentions of the applicant contending that the said Power of Attorney was executed in the name of Mr. Dharmesh Jain by “**RALLIWOLF LIMITED**” merely as a nominee of Corporate Debtor to perform certain acts under the Power of Attorney as Mr. Dharmesh Jain is a major shareholder having 95% stake in the Corporate Debtor. Since the Corporate Debtor was undergoing the CIRP the applicant being a Shareholder/ Director is disentitled to act on behalf of the Corporate Debtor and consequently the said Power of Attorney has become ineffective and remained as a dead document. He further submits that once the Successful Resolution Applicant steps into the shoes of the Corporate Debtor, the applicant would obviously become ineligible to perform any of the acts mentioned in the Power of Attorney in the capacity of nominee of the Corporate Debtor. It is his further submission that this Bench is empowered with all powers to issue necessary directions or waivers for effective implementation of a Resolution Plan and the above application is nothing but a frivolous application filed by the applicant to stall the CIRP process of the Corporate Debtor and therefore prayed for dismissal of the same.

5.4 Mr. Zal Andhyarujina, appearing for the Successful Resolution Applicant more or less adopted the argument of Mr. Ravi Kadam and further added that this Tribunal has every power to pass an appropriate order under Rule 11 of the NCLT Rules, for effective implementation of the Resolution Plan.

5.5 Before deciding the rival contentions of both sides, it is important to mention the following Clauses of both the registered General Power of Attorney dated 06th August 2005, executed by “**RALLIWOLF**

LIMITED” in favour of Mr. Dharmesh Jain and his wife and also the registered Development Agreement dated 4th August 2005 executed by the **“RALLIWOLF LIMITED”** in favour of **“NIRMAL HOLDING LIMITED”** (former name of the Corporate Debtor) as developer:-

(A) Important Clauses under “General Power of Attorney” dated 6th August, 2005:

Clause (i):- To get the plans of the proposed buildings/structure to be constructed on the said Property prepared and sanctioned by the Municipal Corporation of Greater Mumbai (“MCGM”), Town Planning, ULC and other authorities in accordance with the rules, regulations and bye-laws of the MCGM, and to modify, amend and revise such plans and sign all applications, letters etc. relating thereto and to pay all deposits and premium required to be paid to the MCGM and other concerned authorities.

Clause (ii):- To develop and/or carry out construction works departmentally or by appointing Contractors and/or Sub-Contractors, other developers and/or nominees of their own choice and enter into agreements for the same.

Clause (vii):- To pay all the workers dues and statutory liabilities payable to financial institutions and banks in respect of the said property as specifically provided in the said Memorandum of Understanding dated the 1st day of October, 2004 and the said Development Agreement dated the 4th day of August 2005.

Clause (ix):- To sell / let out the flats/ shops/ premises/ garages/open spaces, terraces, in the proposed buildings to be constructed on the said Property for such consideration and on such terms and conditions as the said Attorneys may, from time to time, determine in its sole discretion, including by way of a business service centre or conducting arrangements

and to allow user thereof to various parties or to lease, let out, license, transfer or sell or dispose of the same on OWNERSHIP basis or in such manner as the said Attorneys deem fit and to receive, on the their own account, from such prospective clients the consideration money and to appropriate the same itself, viz. the said Attorneys.

Clause (x):- To create a mortgage, charge, lien or other encumbrance on the said Property for the purpose of obtaining financial assistance from any bank, housing finance or financial institution ("financial institution") as the said Attorneys may deem fit and proper on its own account and for such purpose to execute such power of attorney, to deposit the deeds and documents as may be required by the financial institution.

Clause (xiv):- To execute from time to time all letters, writings, agreements, deeds in respect of the said Property or in respect of premises which may be constructed on the said Property.

Clause (xv):- To lodge all the documents, writings etc. referred hereinabove and/or generally in respect of the said Property for registration as may be required from time to time before the concerned Sub-Registrar of Assurances and to admit execution thereof.

(B) Important Clauses of Development Agreement dated 4th August, 2005:

(i) The Owner is absolutely seized and possessed of and well and sufficiently entitled to all those pieces or parcels of land or ground situate at LBS Marg, Mulund (W), Village Nahur, Taluka and Registration Sub-District Kurla and District Mumbai, bearing CTS No 546 & 547 1 to 6 admeasuring approx. 20262 sq.mtrs of thereabouts together with the buildings and structures constructed thereon and along with plants, machineries, fittings, fixtures attached to the Land and the buildings (the land, buildings, structures and plant, machineries, fixtures and fittings are

hereinafter described in the Schedule hereunder written and hereinafter collectively referred to as "**the said property**");

(ii) By and under a Memorandum of Understanding dated 1st October, 2004 ("**the MOU**") the Owner had agreed to sell the said property to the Developers on an "as is where is" basis and whereunder the Developers had undertaken to pay all the liabilities of workers dues, sales tax, income tax, property tax, provident fund, as mentioned therein;

(v) The Developers declare and undertake to unconditionally withdraw the Petition No. 2253 of 2004 filed by them against Rallifan Ltd., (HMP Engineers Ltd. / Bluemoon Engineers Ltd.) in Kolkata High Court, at their own cost and risk. The Developers further undertake and declare that they will not file any kind of suit /petition/application, appeal and representation before any courts / authority against the Owners and/or Runwal Group of companies **pertaining to Rallifan property** once the Development Agreement and Power of Attorney is executed in favour of the Developers In the event the Developers act contrary to this, they undertake to indemnify and keep indemnified the owners and/or Runwal Group of Companies for all the losses and damages which the Owner or Runwal Group of Companies may suffer due to the acts of the Developers. The Developers will withdraw the petition filed before the Appellate Authority for Industrial & Financial Reconstruction, New Delhi against HMP Engineers Ltd. (now known as Blue Moon Engineers Ltd.) – Case No. 124/97.

Clause 1:- In consideration of the above MOU and in further consideration of an amount aggregating to Rs.7,00,00,000/- (Rupees Seven Crores Only) paid by the Developers to the Owner on or before the execution hereof (the payment and receipt whereof the Owner doth hereby admit and acknowledge and forever acquit, release and discharge the Developers of

and from the same and every part thereof), the Owner hereby gives license, authorizes and permits the Developers to enter upon all that piece and parcel bearing CTS No. 547 & 547 1 to 6 admeasuring approx. 20262 sq.mtrs. or thereabouts together with the buildings and structures constructed thereon and along with plants, machineries, fittings, fixtures attached to the Land and the buildings situate at LBS Marg, Mulund (W), Village Nahur. Taluka and Registration Sub-District Kurla and District Mumbai, Mumbai - 400 080 together with the two buildings constructed thereon (shown delineated on the plan annexed hereto and more particularly described in the Schedule hereunder written and hereinafter referred to as "**the said property**") for the purpose of commencing and carrying out the work of development and construction, pending the transfer of the said property by the Owner to the Developers or their nominee or nominees as hereinafter provided and in accordance with the Development Control Regulations for the time being in force and to sell/ transfer/ dispose of or let out the premises in the structure/s to be constructed on the said property and to collect compensation or deposits consideration or such amount, etc. as the Developers deem fit.

Clause 2 (xi):- the Owner is aware that the Developers are purchasing the said property for the purpose of developing the same after demolishing the existing structures and then selling the units or flats or shops/ offices to be constructed thereon on Ownership basis to various third parties. The Owner has represented that there is no restriction whatsoever on such development of the property by the Developer and/or sale on ownership basis or otherwise to third parties.

Clause 5 (xvi):- The Developers shall be entitled to create a mortgage, charge, lien or such other encumbrance on the said Property and the said FSI for the purpose of obtaining financial assistance from any Bank, Housing Finance or Financial Institution ("financial institution") or any

other person/s, as they deem fit and proper, on their own account. For such purpose, the Owner shall execute such Power of Attorney, deeds and documents as may be required by the financial institution or person's provided that the Owner shall not be personally liable to them for repayment of such loan/s and provided that for each such financial assistance obtained by the Developers, the Developers shall keep the Owners indemnified in respect of all actions, suits, claims and payments arising there under.

Clause 5 (xxiii):- to develop the said Property by way of joint venture, partnership or in any other whatsoever as the Developers deem fit.

Clause 6 (ii):- To execute and hand over to the Developers forthwith a Power of Attorney in favour of the nominee/s of the Developers with a view to enable the Developers to expeditiously make and submit the applications, plans, etc., and to otherwise obtain all building permissions and all powers incidental thereto. The Developers shall keep the Owner fully and effectively indemnified against all claims, demands, actions and/or proceedings that may be taken by any person or authority in connection with and/or relating to or touching anything done in pursuance of such Power of Attorney which shall be at the risk, expenses and costs of the Developers alone;

Clause 8:- The Owner hereby declares and confirms that the Developers are entitled to allow use of, let out, sell on an outright basis building deal with or dispose of the flats/premises, offices open spaces, terraces, garages, stilt etc. in the said structures to be constructed on the said Property to any person or persons as the Developers may desire or deem fit and to receive consideration on their own account and appropriate the same without being liable to account for the same to the Owner in any manner whatsoever. The Developers shall for the said purpose, be entitled to enter into agreements with the prospective occupants of the premises / flats as a

principal in its own capacity. It is specifically agreed that no obligations of any nature whatsoever of the Developers shall be incurred by the Owner qua the prospective purchaser, tenants, lessees, licensees, etc. of the Developers and it shall be the obligation of the Developers alone to comply with and carry out the agreement or letters of allotment, writings and documents with the respective purchasers. It is also agreed that the Developers shall be entitled to receive and retain with itself all the moneys from the persons to whom the said premises/ flats etc. are sold or allotted as the case may be in the buildings / structures to be constructed by the Developers on the said Property and to appropriate the same in such manner as the Developers may deem fit. All the moneys which shall be received by the Developers from such persons shall belong to the Developers and will be received by them on their own account. The Owner shall also not be liable or responsible to any such persons so far as the said moneys are concerned either for the refund thereof or for any misapplication or non-application part thereof.

- 5.6 It is an admitted fact on both sides that the wife of Mr. Dharmesh Jain namely Mrs. Anju Jain is no more. Hence, the Power of Attorney in her favour has come to an end on account of her demise. The plain reading of the above terms of the Power of Attorney makes it abundantly clear that the said Power of Attorney was executed in the name of Mr. Dharmesh Jain and his wife mostly to perform the acts necessary for construction of the project, viz. to obtain plans and to execute construction works and to sell the flats and to pay to all workers and statutory liabilities payable to financial institutions etc. as provided in the Memorandum of Understanding dated 1st October, 2004 and development agreement dated 4th August, 2005.
- 5.7 The principal namely “**RALLIWOLF LIMITED**” had already received seven crores towards sale consideration for the property and also

acknowledged the same in the development agreement and, therefore, nothing needs to be done by the applicant in this regard. In so far as, obtaining permissions from the authorities for construction, supervision and sale under the Power of Attorney are concerned, the applicant has legally disentitled to act on behalf of the Corporate Debtor having lost his control in the Corporate Debtor company on account of admitting the Corporate Debtor into CIRP. Even otherwise all the above referred powers were conferred up on the Corporate Debtor also in the development agreement and, therefore, the Corporate Debtor can legally deal with the property and go ahead with the construction activity. As per Clause 6 (ii) of the development agreement the principal namely “**RALLIWOLF LIMITED**” shall execute and handover to the developers, viz. Corporate Debtor forthwith a Power of Attorney in favour of the nominees of the developers with a view to enable the developers to expeditiously make and submit the applications plans etc. and to otherwise obtain all building permissions and all powers instantly thereto. Therefore, it is very clear from the above recital that the Power of Attorney in the name of the applicant and his wife was executed only in the capacity of nominees of the Corporate Debtor for taking up the construction activity immediately.

- 5.8** The plain reading of the development agreement also makes it very clear that “**RALLIWOLF LIMITED**” had absolutely conveyed the property in the name of Corporate Debtor with all absolute rights including the right of alienation, mortgage, sale, etc. and “**RALLIWOLF LIMITED**” has no right, title, possession or interest over the property. It is not the case of the applicant that he has performed any of the acts like obtaining plans or part construction etc. which have to be carried out by the Successful Resolution Applicant afresh independently after stepping into the shoes of the Corporate Debtor as they might have become time barred due to long passage of time even if they are obtained. Even though this Tribunal cannot

directly cancel a registered Power of Attorney like a Civil Court as contended by the applicant, it is not legally disentitled to issue appropriate directions to the concerned authorities for effective implementation of the Resolution Plan by using its powers under the Code.

- 5.9** When the principal **“RALLIWOLF LIMITED”** had lost and relinquished all their rights in the property, there is no point in saying that Mr. Dharmesh Jain is still having some rights under the Power of Attorney. As stated supra the Applicant has not specifically stated anywhere in the application as to what are the acts he has performed under the Power of Attorney to show that he has at least acted under the Power of Attorney except mere assertion that he has some rights under the Power of Attorney. Therefore, this Bench has no hesitation in holding that the said Power of Attorney does not enure to the benefit of Mr. Dharmesh Jain at this stage except for mere assertion that he has a registered Power of Attorney as the said Power of Attorney remained a dead document left with an empty formality of cancellation. Therefore, this Bench can issue appropriate direction to the Sub-Registrar and concerned statutory authorities at the time of passing final orders approving the Resolution Plan keeping the above observations in mind. Hence, the Resolution Plan cannot be rejected on the sole ground of existence of Power of Attorney in the name of applicant if it is in compliance with other provisions of the Code. Similarly, this Bench has no power to direct the Successful Resolution Applicant or CoC to delete any clauses in the Resolution Plan as sought by the applicant. Accepting or rejecting the concessions and waivers by the Successful Resolution Applicant is purely a judicial discretion of this Tribunal depending upon the necessity which has to be taken care while passing the order approving the Resolution Plan. Hence, this Bench has no hesitation in once again reiterating that the Applicant is disentitled to act under the Power of Attorney and in fact he never acted or done anything

in furtherance of the above Power of Attorney. Thus, this Bench is of the considered opinion that the above application is filed by the Applicant taking the mere advantage of its non-cancellation of the registration.

6. For the forgoing reasons, this Bench is of the considered opinion that the above application is nothing but a vexatious and dishonest attempt made by the Applicant who is none other than the Member of a Suspended Board of the Corporate Debtor having 95% stake in the Corporate Debtor and encouraging this kind of application would certainly amount to extending helping hand to the people like the Applicant which may ultimately prevent revival of viable companies and defeat the very object of the Code. Therefore, this Bench feels this is a fit case to impose costs on the applicant.
7. Accordingly, the above IA 3689 of 2022 is dismissed by imposing cost of Rs.1,00,000/- (Rupees One Lakh Only) payable by the Applicant to the CoC within two weeks from the date of uploading the order.

Sd/-
Madhu Sinha
Member (Technical)

Sd/-
H.V. Subba Rao
Member (Judicial)